of some such action as has now been taken in providing for a careful treatment of this subject.

PROFESSOR THAYER has prepared an excellently arranged index to his Cases on the Law of Evidence, of which owners of the first edition of the Cases may obtain copies gratis by applying to the publisher, Charles W. Sever, Cambridge, Mass., through the dealer of whom they obtained the book. In view of the suddenness with which questions in the law of evidence present themselves in court, it is believed that the index will be of peculiar value to the practitioner.

PUBLICATION OF TESTIMONY RESTRAINED BY ORDER OF COURT. — Considerable interest has been awakened by the recent order of a trial judge in Massachusetts that no report of the evidence in a breach of promise case before him should be published until after the termination of the trial. It was at once assumed that the matter was unfit for publication; but nothing of that sort was disclosed on the trial. It appeared that the order was made at the request of the defendant. The right of the court to make such an order is undoubted. Even without this, any publication tending to create a prejudice may be punished as a contempt. In 24 West Virginia, 416, the court, after a lengthy discussion, affirmed its right to punish for contempt the author of a publication imputing corrupt motives to the court. The same thing was held early in the century in the famous cases against Duane, Wall. C. C. 77. In Mississippi, however, the Supreme Court has denied, on common law principles, the right to punish for contempt anything done outside the court-room. It is believed that that State stands alone in this regard. This power has been exercised more frequently in England than in this country; perhaps never here has just such an order been made. In *King* v. *Clement*, 4 Barn. & Ald. 218, Clement was punished by fine for disobeying an order precisely like the one under discussion. Section 725 of the Federal statutes limits the right of the Federal courts to punish contempts to "the misbehaviors of any person in their presence." Under this statute a publication outside could not be treated as a contempt. It seems, however, that this cannot control the Supreme Court, for a part of its original jurisdiction conferred by the Constitution must include the right inherent in every court to punish contempts. New York and Pennsylvania have similar statutes. It is supposed that at common law a court could try a case in secret. If this be true, it could admit reporters on terms.

But the rights of the court must be limited to such measures as are required by the due administration of justice in the particular case. The courts are not charged with the duty of preserving public morals. It is hard to see how the publication of matter could be forbidden simply on the ground that it is corrupting. And a court cannot forbid the publication of evidence after the termination of the suit. It has been so held in California. Conceding, then, that the right of a court is thus bounded, the party aggrieved may not always have a satisfactory remedy. Commitment for contempt is a summary proceeding, and the best authorities hold that it is not reviewable by any other court. On a writ of *habeas corpus* the only question is as to the jurisdiction of the court issuing the process. If the court had jurisdiction, its order is final. And since it must decide what a contempt is, it would usually have jurisdiction if the

person was before the court. The abuse of this power to imprison for contempts, and the injustice done, were very crying evils in the last century in England. But bearing in mind the possible dangers incident to all summary measures, it would seem that the dignity of the court might be upheld, and justice furthered, by a more frequent exercise by the courts of their privilege. The words of Lord Hardwicke have lost nothing of their force or meaning in the lapse of a hundred and fifty years: "Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the mind of the public against the persons concerned as parties in a cause before the cause is finally heard." If the infrequent use of this power in the past be urged against its application now, it may be answered that never before has the threatened substitution of trial by newspaper for trial by jury made such action so imperative.

MALICE — MALICIOUS CONSPIRACY. — The decision in the recent English case of *Temperton* v. *Russell et al.*, L. R. 1893, 1 Q. B. 715, in the Court of Appeal, is interesting in more than one way. By sustaining unanimously the verdict upon the first count, the Court of Appeal (Lord Esher, M. R., A. L. Smith, Lopes, L. JJ.) adds a third well-considered English decision to *Bowen* v. *Hall*, L. R. 6 Q. B. D. 333, and *Lumley* v. *Gye*, 2 E. & B. 216, in favor of the doctrine that malicious procurement of a breach of contract is an actionable tort. The court refused to accept the attempted distinction that those were and this was not a case of personal service, Lord Esher saying that *Bowen* v. *Hall* was "not a case of master and servant," and that the rule was general.

The case also helps towards definition of "malice" and of "malicious." Exactly what those words mean in this new form of action it has not been easy to say. The dictionary definition of malice as a morally evil desire to do injury (Worcester), puts to the law the too difficult question of what is and what is not morally evil. It would seem that here, as in the law of libel, the true meaning of the words must be "without lawful excuse;" since justifiable procuring of breaches of contract will not be actionable, however evil the motive, and mere lack of motive should not be a justification for procuring such breaches. In the case under consideration, Collins, J., charged the jury "that to induce a person who had made a contract with another to break it in order to hurt the person with whom it had been made, to hamper him in his trade, or to put undue pressure upon him, or to obtain an indirect advantage, was in point of law to do it maliciously; and that if the jury were satisfied that the defendants, or any of them, had induced persons to break contracts with the plaintiff, of the existence of which they were aware, and if their object in doing so was to injure the plaintiff in his trade in order to compel him to do something which he did not want to do, that would be 'maliciously' in point of law, and a cause of action would be established." This charge states several hypothetical cases applicable to the first count before the jury, in each of which the judge considered that there would be no lawful excuse, and in each one, from the point of view both of common honesty and of law, it would seem that a man has a right to protection for his contracts. The person who promotes and abets such a breach of faith should, unless he can show some justification, be liable equally with the principal.